

PLANNING REPORT & RECOMMENDATION

To: Malden Planning Board
From: Malden City Planner
Date: December 17, 2019
Subject: Amendment of §300.1, Chapter 12, Revised Ordinances of 1991 as Amended (“MZO”) City Council Paper 386/2019

PETITION: The petition to amend the zoning ordinance (MZO) is by the City Council (§800.5, MZO), sponsored by Ward 4 City Councilor Ryan O’Malley and Councilor at Large Craig Spadafora.

SUMMARY of Purpose and Intent of Proposed Amendment:

- To ensure coordination of two related City ordinances: the zoning ordinance and the Demolition and Alteration Delay Ordinance (Section 3.42, Chapter 3, Building; ordained June 11, 2018 by CCP 171/2018) (*attached*).
- To streamline the permitting process for property that is subject to both ordinances.
- To regulate development of property that is determined to have historical, architectural, cultural or urban design value to the City.

PROVISIONS of Proposed Amendment:

1. Use Regulations.

The proposed amendment establishes special permit regulations that supplement existing regulations:

“ In addition to any other special permit that may be required as herein provided by this Ordinance, in the case of any property, in any zoning district, that is or was the site of a building or structure that has been determined to be a Preferably Preserved Building by the Malden Historical Commission pursuant to the City of Malden Demolition and Alteration Delay Ordinance, a special permit shall be required for any new construction, structural changes and/or alterations to the building, structure or site.”

As proposed, the regulations do not eliminate or change existing use regulations, and apply in all zoning districts only to:

- property to be demolished that the City has been determined is preferable to preserve for its historic significance in the City (“Preferably Preserved”).
- new construction, structural changes and/or alterations.

***Note 1:** The Demolition and Alteration Delay Ordinance describes the required process for the Commission to make a determination whether a building is Preferably Preserved; defines a Preferably Preserved Building as a “Significant Building which the Commission determines, following a public hearing, that it is in the public interest to be preserved rather than demolished or altered. A Preferably Preserved Building is subject to the twelve-month demolition or alteration delay period of this Ordinance.” (Section 3.42, Chapter 3)*

2. Dimensional Controls and Parking Requirements.

The proposed amendment does not change required dimensional controls or parking requirements for use of property. The amendment provides the same standards re: compliance with dimensional controls and parking requirements for granting a special permit as those for special permits under current use regulations (§300.1, MZO).

“...a special permit may be granted only in conformance with the following controls:”

A. For new construction, the amendment requires compliance; a variance must be sought and obtained for any violations:

“.1 For construction of a new building or structure, compliance with the dimensional controls and parking requirements of this Ordinance.”

B. For preexisting nonconforming properties, the amendment provides the special permit granting authority with discretion to allow new nonconformities, provided the required finding is made:

“.2 For any extension, addition, structural change and/or alteration to an existing building, structure or site, lawfully existing or begun prior to the first publication of notice of the public hearing on this amendment, the special permit granting authority must find that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood.”

3. Finding Required to Grant a Special Permit.

The proposed amendment provides the required finding that must be made by the special permit granting authority:

“3 The special permit granting authority must find the proposal is in the interest of the common good.”

4. Historical Preservation Recommendations Incorporated into Special Permit.

The proposed amendment requires recommendations of the Malden Historical Commission be incorporated into the special permit re: historical features/elements, façade and exterior:

“4 The special permit granting authority must receive and reasonably incorporate into a special permit that is granted the recommendations of the Malden Historical Commission regarding the preservation of the building, structure or site, which may include, but is not limited to, the rehabilitation, restoration, replication and/or reuse, in whole or in part, of the building, structure or site, or any historical features or elements of the property, the façade and the exterior of the building.”

5. Special Permit Granting Authority.

The proposed amendment maintains the same special permit granting authority where a special permit is already required for the underlying use (§300.1, MZO); and where there is none, establishes the Planning Board as the special permit granting authority.

“5 Where the proposal may be allowed by special permit, as required by any other provisions of this Ordinance, the special permit granting authority shall be the same; where no special permit is otherwise required under this Ordinance, the Planning Board shall be the special permit granting authority.”

6. Administration.

The proposed amendment codifies the current practice and protocol in operation by City officials in the permitting process:

“6 Prior to filing an application for a special permit, Applicant must file a Notice of Intent to Demolish or Alter a Building/Application for Review by the Historical Commission and all applicable Determinations by the Historical Commission under the Demolition and Alteration Delay Ordinance must be obtained.

APPLICATION/EXEMPTIONS: The amendments will apply to all new construction and new use/occupancy of existing buildings, unless exempt (“grandfathered in”) by M.G.L. c. 40A, §6; §700.1.1, MZO; the State Permit Extension Act (2012); or the express language of the amendment.

Note 2: Per state statute, applications for permits that are in the processing stage when publication occurs are not protected; historically, the City interprets, in consideration of any pending petitioner’s good faith reliance on current regulations, that proposed amendments do not apply to applications filed prior to the first publication of notice of public hearing (November 15, 2019). The following applications were filed prior to November 15, 2019 and are in the processing stage: 368 Pleasant Street; 100 Maplewood Street; and 45 Holyoke Street. All three properties have already completed the required process for review and determination by the Historical Commission pursuant to the Demolition Delay Ordinance.

EFFECTIVE DATE: The effective date of an amendment is the date of the City Council’s vote to ordain the amendment (§800.5.7, MZO). The Council must act on the amendments within ninety (90) days after the hearing closes, otherwise, a new duly advertised public hearing must be held (§800.5.5, MZO); accordingly, if the public hearing closes on December 17, 2019, the final date for action is March 16, 2020.

STANDARD of REVIEW: The Planning Board’s review and recommendation of the proposed zoning changes should be directed by *substantive planning objectives, community need and general welfare.*

PLANNING RECOMMENDATION (*Prepared prior to the public hearing*): That the Planning Board recommends to the City Council adoption of the amendments as submitted.